

**"The Changing Nature of Courts"**

**State of the Judiciary**

**Chief Justice Randall T. Shepard**

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Governor O'Bannon and Members of the General Assembly:

The occasion which the Constitution creates for an annual report on the state of Indiana's courts has long been a way by which the Chief Justice accounts for the trust our fellow citizens and our fellow office holders have placed in their judiciary, to describe our stewardship, present and future.

Of course, it is also a moment when we ourselves focus on our performance and our aspirations for doing better. In reporting to you today, I lay out our progress in four areas. In focusing on these, however, it has become apparent to me that these advances have a more global meaning than that assignable to the individual improvements. Put another way, the whole of what we are doing is larger than the sum of the parts.

Taken as whole, the court system of our state is a very different place than it was even twenty years ago. As I report on our activities in criminal justice, families, access to justice, and court institution-building, I think you will conclude that we have been re-constructing courts so substantially that the change is a matter of kind and not of degree.

### **An Actual System of Criminal Justice**

Perhaps the dramatic nature of this change can be illustrated by an experience I had just before I came to the Supreme Court, when as a trial judge in Evansville I traveled to a different county as special judge to take a guilty plea and impose sentence.

The defendant was an eighteen-year-old caught selling some sort of drug in the aisle of a convenience store. It was the first time he'd ever been involved in a scrape with the law, but it was a serious one. On the other hand, he did have a job and friends and family who seemed committed to getting him straightened out. I could easily have sent him to prison for five or ten years, at a cost of \$22,000 a

year. That wasn't what he needed. It certainly wasn't a good idea to turn him loose with time served, because he needed to see the inside of a jail to make sure he understood what would happen if he didn't change the course of his life.

In my courthouse at home, we would have sentenced him to work release -- working during the day and being locked up at night. In the county where I was hearing the case, however, I soon learned there was no work release. "Do you have intensive probation with periodic urinalysis?" I asked. No, they didn't have that. "Is there a system for weekends in jail?" "No, but I guess the jail will do whatever you order." So, I sentenced him to a long period of weekends in jail, followed by supervised probation.

There was a time when our society was adequately served by courts where judges simply chose between prison and probation. The smartest sentence, though, is the one that does the best job at preventing a future crime. Sometimes fifty years in prison is the only appropriate sentence, but usually some other sentence can be effective. And so, today, in fifty-two counties, certified court drug and alcohol officers conduct assessments of people like the

young man I just mentioned to assist judges in sorting out which offenders need long-term prison, which ones need mostly treatment for an addiction, and which ones need something in between. In fact, today, 80 percent of Hoosiers live in counties served by court drug and alcohol programs. Our use of these techniques works better than ever, since the General Assembly transferred responsibility for supporting local court programs to the Judicial Center in 1997.

Yet another form of effective sentencing is at work in Indiana's twenty drug courts. It is an accepted rule in drug rehabilitation that people with a chance to rehabilitate perform best when the threat of sanction is always close at hand. Thus, in a drug court the judge examines a defendant face-to-face every seven days. In Judge Wayne Trockman's new "Day Reporting" system in Vanderburgh County, offenders see somebody from the court every day so that the threat of sanction is always present. Sometimes even offenders who initially fail finally turn out all right. Judge Barbara Brugnaux of Vigo Superior Court recently noticed a drug court drop-out sitting briefly in the back of her courtroom, and when she later

returned to her office, he had left a pink slip that said:  
"Thank you for saving my life."

Indiana's newest form of criminal justice isn't even located in the courthouse. Marion County's new community court, led by Judge Michael Keele and Commissioner Ann Christ, is located on the southeast side in what used to be the Shelby Savings and Loan building. It is a place where justice is swift, local, and well-measured. There was a time when the system neglected offenses like conversion, vandalism, and public intoxication to save resources for major crimes. In the new community court, some thug who vandalizes the home of an elderly woman may get arrested on day one, charged and pled on day two, put to work repairing the damage on day three, and sent to job training on day four. This sort of swift prosecution of minor offenses has been one of the keys to the reduction of crime in New York City.

Officials in Fort Wayne believe that their new "Re-entry Court" can do the same. This system represents a collaboration between Mayor Graham Richard's office, Judge John Surbeck of the Superior Court, the Inner City Ministerial Alliance, and agencies concerned with what

happens when adult or serious juvenile offenders return from incarceration. If they simply walk back out on the street, they are very likely to return to the life they led before. That usually leads to another crime, another victim, another prosecution, and so on. Fort Wayne's system of covering re-entering felons with temporary housing, job placement, mentoring, and the like -- the tools for creating a different life -- has been drawing attention from all over the United States. The U.S. Department of Justice recently convened a meeting in Fort Wayne to study this model, and they said, "The most crucial component is the re-entry court."

All of this represents a remarkable transformation in the way courts function as instruments of public policy. To be sure, courts are still places where judges and juries hear evidence and issue decisions, but their connection to the real life of the community is more meaningful today than it has ever been.

### **Engaged in the Lives of Families**

The role of Indiana courts in the problems of families and children has been evolving ever since we became the second state in the nation to create juvenile courts in 1903, but the rate of change has raced forward in the last decade.

Consider a single change -- the addition of court-appointed special advocates (CASA). Parents, lawyers, and caseworkers were the traditional voices heard in the courtroom on decisions about children. Recognizing that these participants sometimes focus mostly on their own interests, courts created programs in which trained community volunteers speak solely for the interests of the children. The General Assembly has in the last decade appropriated funds to our Division of State Court Administration to help finance the recruiting, training, and placement of those volunteers. The result is an explosion in the number of citizens volunteering to help children. Last year, this force of 1,630 people spoke up in court for over 11,000 children, just for the children. And last fall's conference for Indiana CASAs was sold out for the first time. Indiana now has more of these programs than any other state.

For the most troubled children and youth, Indiana has completely changed the landscape. You all know the historic lament of advocates for our children: we have no respectable place to put children who are in trouble. And twenty years ago, that was right. A shocking number of them were simply kept in jails. In 1988, 7,372 children were locked up in county jails with adult offenders, even though the General Assembly had made it illegal. The Supreme Court and Indiana Public Defender Susan Carpenter decided that we simply would not let this go on any longer. And within thirty months, the number of children illegally detained had been cut 94%. Since I last reported to you on this it has been cut even further; we have now eliminated 99% of those violations.

That's important, but not as important as what happened next: we created more effective alternatives. Just since 1990, there are new specialized, secure facilities in places like Franklin, Vincennes, New Castle, South Bend, Clarksville, Muncie, Elkhart, Marion, Noblesville, Kokomo, Anderson, Seymour, Lawrenceburg, LaPorte, Valparaiso and new ones under construction in Merrillville and Fort Wayne. Judges, and legislators, and Office of Family and Children directors, and county



governments, and social workers have made this happen. We have changed the very nature of that system, and it is something this state has the right to be proud about.

No, not your father's court system. Why is it that for families and children the whole is greater than the sum of its parts? The Family Courts Pilot Project, that the legislature has given us the funds to launch, demonstrates that these are not divorce cases, or paternity cases, but dysfunctional families in whom society has an interest. And the power given to courts can be the most effective tool in marshalling individualized solutions for families in distress.

### **Access to Courts Is Access to Justice**

The classic image of a court was summed up by Oliver Wendell Holmes' reply to a lad who saw him coming out of court one day and asked, "Did you do justice?" "This is a court of law, young man," Holmes replied, "not a court of justice."

Today's Indiana courts are certainly both. You could describe our work as hearing and deciding 1.6 million cases a year. Though we certainly do that, in a larger sense we are an institution through which men and women resolve their disputes. And Indiana judges and lawyers have been energetic at creating better ways to give people access to law and justice.

One of those better ways is unique in the nation, and it took off flying during 2001. The Indiana Pro Bono Commission, chaired by Judge Mark Bailey of the Court of Appeals under the auspices of the State Bar Foundation, distributed the first funds to support local committees - led by judges and bar leaders - that are recruiting, training, and placing thousands of lawyers willing to donate their time to help people too poor to hire counsel with their civil legal problems. Justice Dickson went recently to promote this cause at a recruiting meeting in Miami County, organized by Judge Daniel Banina, and a third of all the lawyers in six counties showed up. In the six counties surrounding Jeffersonville, Clarksville, and New Albany, leaders like Judge Cecile Blau and Mark Robinson of Indiana Legal Services expanded the number of volunteer lawyers from 68 to 115 in one year. Judge Phil Adler's

committee in western Indiana has been remarkably successful, earning him the State Bar's Pro Bono Award. In at least one place, the effort has reached its maximum potential; in Pike County the sign-up rate is 100%.

We also need to help the growing number of people who go it alone. We announced our new project for unrepresented people at a press conference in Fort Wayne, and Allen County Clerk Lisa Blosser came to support the program, observing that the number of people showing up in the Clerk's Office without a lawyer was growing rapidly. We are now placing some of the simplest forms on our Internet site, always with a stern warning that there are many things people should not attempt without a lawyer. Since the first of these forms went up in October, some 6,000 people have visited what we call the "Self-Service Legal Center."

Speaking of the World Wide Web, we began using it last month to help educate people about their judiciary. We started a program that webcasts the sessions of the Supreme Court, Court of Appeals, and Tax Court, making our proceedings far more accessible to citizens, lawyers, and the press. One of our key audiences is Indiana's 300,000

high school students, for whom these broadcasts can be educational tools. They go on the web complete with detailed lesson plans we have created.

Courts may once have been the place where people went down to the courthouse and waited for the bailiff to shout, "All rise." We are not that sort of place anymore. Not a place characterized by that classic image of the judge sitting high above the audience in splendid isolation, but an institution integrally connected to the community it serves and better equipped than ever before to serve.

This is a change in kind reminiscent of what somebody once said about the decline of American railroads. People who ran the railroads, it was said, came to think their job was moving trains from one place to another. And the truckers ate their lunch because they understood that their mission was transporting goods from one place to the next. We plan to be a judiciary that sees itself not as a place where widgets are made, in the form of thousands of case decisions, but as a place where disputes one citizen has with another can be ironed out.

## **Judges Organized for Reform**

To be more effective at resolving disputes, we have needed to change the ways the courts manage themselves. As the Indiana judiciary has grown larger and its tasks have become more complex, we have necessarily moved on from the traditional organization of the courts which more than anything else looked like two hundred separate boxes. To deal with the sort of challenges we now encounter, we have devised new ways in which the judiciary can act collectively.

Some of these joint ventures have been so simple it is hard to imagine any other way to proceed. When we decided to permit court papers to be filed by fax, for example, our rule authorizing it said that courts in each county could take fax filings as long as all the judges in that county adopted a unified method of doing it. The Supreme Court did not particularly care what method was chosen, but there was no justification for making citizens and lawyers learn three or four different fax rules, one for each court in a single courthouse.

We have since applied the same model of local decision-making to other projects, like the assignment of special judge cases and the reallocation of caseloads where they were out of balance. This reliance on local decisions is largely the way we expect we would approach the management of finances should the state decide, as it has been doing in recent years, to assume greater responsibility for financing local courts. We understandably experience ongoing friction with county councils and commissioners over the burden they bear for financing the third branch of government.

In effecting state-wide change, we have expanded the role of the Judicial Conference of Indiana, which is a body consisting of all the state's judges that the legislature created about twenty-five years ago. The committees of the Judicial Conference have become engines for reform and initiative. Frequently, these represent projects the legislature or the executive branch ask us to perform, such as the adoption of child support guidelines.

This use of committees by the Judicial Conference and the Supreme Court led to a host of good works during 2001. The Domestic Relations Committee and its chair Judge Dan

Donahue have devised a whole new plan called the Parenting-Time Guidelines, designed to improve the role non-custodial parents play with their children. The Judicial Technology and Automation Committee, chaired by Justice Frank Sullivan, has made great progress with the funds the legislature made available -- and I'd like to thank the appropriating committees and Representative Kersey, Senator Kenley, Senator Bray, and Senator Long for making that happen. This year alone we have placed e-mail in every court, provided electronic legal research for every judge, and training at Ivy Tech for every court reporter, and we are about to launch a modern case management system for trial courts.

Our Protective Orders Committee, chaired by Judge John Forcum, has fashioned a set of proposals on domestic violence embodied in bills sponsored by Representative Connie Lawson and Senator Murray Clark. And our new Commission on Race and Gender, chaired by Justice Myra Selby and Judge Ezra Freidlander, commenced its work with a series of field hearings in eight cities, including one conducted in Spanish.

To achieve progress like this, the court system relies on the energy and leadership of a relatively small number of very talented people, especially its pool of trial judges. And that's why measures like Senator Harrison's compensation commission bill and the legislation to transfer magistrates from PERF to the judges pension fund are so important to us. They sustain this body of leadership.

This new level of internal organization and leadership has special meaning for at least two reasons.

First, the people of Indiana need to know that their court system is not a place where the left hand does not know what the right hand is doing. Before we adopted child support guidelines, for example, it was possible for two fellows working on the same assembly line for the same wage, who got divorced on the same day in the same courthouse, to have radically different child support obligations. That used to happen all the time, and people thought it was crazy and unfair, and they were right, and we have largely fixed it with a healthy dose of collective self-discipline.



Second, the executive and legislative branches have to know that the judiciary is capable of acting as a strong partner on those occasions when solving some important problem requires that all three branches move more or less in the same direction -- if not quite on the same precise pitch, at least singing off the same page in the hymnal. The Governor's decision to include the judiciary in the Indiana Counter-Terrorism and Security Council, for example, should make it a stronger enterprise. Likewise, the proposed commission to revise the juvenile code, Senate Bill 459, is a good example of a project that really needs attention by all of us.

For the judiciary to be a good partner in ventures like this, and so many others, we have had to achieve a higher level of internal organization.

### **Why Do We Act?**

Finally, why is it that we commit ourselves to pushing ahead on tasks like these? What is the goal, what is the duty we have as officeholders? It is a question considered by Americans in all walks of life during the last four

months. It has certainly been on the minds of judges and the people who work with us, who like many Americans have been led to re-examine how they spend their lives.

There was a poignant story, one of so many, about an encounter Mayor Rudy Giuliani had on the afternoon of September 11th. He finally made his way to the hospitals, to offer help and assurance to the legions of medical personnel and patients at Bellevue and St. Vincent's. A distraught man approached him, saying, "They're telling me they don't need my blood. What should I do?" By this time the Mayor already understood what most of us took longer to appreciate -- that there was such a thing as a disaster so titanic that little blood was actually needed. The Mayor also understood that like so many, this man needed to do something. "You should wait," he said, "and you should give blood, if that's what you want to do."

Well, with the passage of time, it has become clear that all of us need to do something.

And the something that judges can do is work with more energy and skillfulness and humanity to build on that remarkable, resilient pillar of American society, the rule

of law -- justice rendered freely and impartially and fully. Everyone contributes in his or her own way, from small deeds of kindness and charity to great and heroic acts. Our acts are aimed at building a more just society, correcting wrongs, healing families, giving a second chance to those who deserve it, and holding accountable those who do not.

In short, the people in the courts "do something" by making America a more decent, safe, and prosperous society. As the men and women of the nation's security forces still wage war overseas, risking their own lives for the safety of the nation, our contribution is to commit our very careers so that when they come home, asking as they might the age-old question, "Oh, say, does that star-spangled banner yet wave, o'er the land of the free and the home of the brave?", that the country might be able to answer resolutely, "yes."

Our role in the defense of the nation is to make it a nation worth defending. And we will.